

Judge Najam, cont.

“Caught in the Middle: A National Symposium on the Role of State Intermediate Appellate Courts,” attended by judges from 22 states, the first such national conference.

He has served as a member of the Indiana Supreme Court Committee on Rules of Practice and Procedure (1995 to 2005) and the Indiana Supreme Court Judicial Technology and Automation Committee (1999 to 2005), and he represents the judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council.

Judge Najam is a member of the American, Indiana, and Monroe County Bar Associations, a graduate of the Indiana Graduate Program for Judges, a Fellow of the American, Indiana and Indianapolis Bar Foundations, a member of the Indiana University Maurer School of Law Board of Visitors, a member of Phi Delta Phi legal fraternity, and an Eagle Scout. Judge Najam and his wife live in Bloomington.

Judge Baker, cont.

In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board’s Academic Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

Attorneys for the Parties

For the Appellant

**Mitchele J. Harlan** was born in Rose City, MI and now lives and practices law in Jeffersonville. He earned an undergraduate degree in history from Alma College (MI) in 1982 and his law degree from the University of Louisville in 1985.

He is admitted to the Southern and Northern Districts of Indiana and the 7th U.S. Circuit Court of Appeals. Mr. Harlan has been in general practice since 1985 and a part-time Clark County public defender since 1997. He’s represented clients in civil, domestic and criminal appeals before the 6th and 7th U.S. Circuit Courts of Appeals and the Indiana and Kentucky appellate courts.

He is married and has three adult children and one grandson. Mr. Harlan is active in Christian ministry, currently at Park Memorial United Methodist Church. He is an Eagle Scout and an adult scout leader for more than 20 years.

For the Appellee

Ellen H. Meilaender is a Deputy Attorney General in the Criminal Appeals Section of the Office of the Indiana Attorney General.

She grew up in Oberlin, OH, and received her B.A. in 1997 from Wittenberg University with a major in political science and a minor in history. She received her J.D. in 2000 from the Indiana University-Bloomington School of Law, where she was an Article Editor on the Indiana Law Journal.

She joined the Attorney General’s Office in 2000 and has been a supervising attorney in the Criminal Appeals Section since 2004. She has written more than 1,000 criminal appellate briefs and co-authored an amicus brief cited by the United States Supreme Court in *Oregon v. Ice*, 555 U.S. 160 (2009).

She has presented oral argument more than 60 times before the Indiana Supreme Court and Court of Appeals.

To the Judge

by James Whitcomb Riley, 1849-1916

*A Voice From the Interior of Old Hoop-Pole Township\_*

Friend of my earliest youth,  
Can't you arrange to come down  
And visit a fellow out here in the woods--  
Out of the dust of the town?  
Can't you forget you're a Judge  
And put by your dolorous frown  
And tan your wan face in the smile of a friend--  
Can't you arrange to come down?

Can't you forget for a while  
The arguments prosy and drear,--  
To lean at full-length in indefinite rest  
In the lap of the greenery here?  
Can't you kick over 'the Bench,'  
And 'husk' yourself out of your gown  
To dangle your legs where the fishing is good--  
Can't you arrange to come down?

Bah! for your office of State!  
And bah! for its technical lore!  
What does our President, high in his chair,  
But wish himself low as before!  
Pick between peasant and king,--  
Poke your bald head through a crown  
Or shadow it here with the laurels of Spring!--  
Can't you arrange to come down?

'Judge it' out \_here\_, if you will,--  
The birds are in session by dawn;  
You can draw, not \_complaints\_, but a sketch of the hill  
And a breath that your betters have drawn;  
You can open your heart, like a case,  
To a jury of kine, white and brown,  
And their verdict of 'Moo' will just satisfy you!--  
Can't you arrange to come down?

Can't you arrange it, old Pard!--  
Pigeonhole Blackstone and Kent!--  
Here we have 'Breitmann,' and Ward,  
Twain, Burdette, Nye, and content!  
Can't you forget you're a Judge  
And put by your dolorous frown  
And tan your wan face in the smile of a friend--  
Can't you arrange to come down?

SYNOPSIS

Indiana Rule of Criminal Procedure 4(C) requires the State to bring a defendant to trial within one year. That year begins on the later date of a defendant’s arrest or charge, and it includes every calendar day except when there was a continuance at the defendant’s request; the delay was caused by the defendant’s act; or there was not enough time to try him during such period because of congestion of the court calendar.

If a court must continue a trial due to congestion or emergency, it should enter an order explaining the delay and reset the trial within a reasonable time. A defendant has no obligation to remind the State or the trial court of the duty to bring him to trial within one year. However, a defendant waives his right to be tried within one year if he does not object when, during the one-year period, the court sets the trial for a date outside that one-year period.

Byron Tinker was arrested on July 16, 2012, and on July 19, 2012, the State charged him with four drug-related offenses. On July 31, 2012, the trial court scheduled pretrial hearings, an attorney conference, and trial. Trial was to be held Nov. 13, 2012. At the second pretrial conference, on Sept. 26, 2012, the parties reported Tinker had accepted a plea offer.

However, the next substantive CCS Entry, on Jan. 8, 2013, indicates the court was resetting the pretrial and trial dates, and trial was now set for March 12, 2013. There were no more CCS entries until April 2, 2013, when the court set pretrial dates and set a trial for June 11, 2013. The next CCS entry is July 30, 2013, when the court set a pretrial conference for Aug. 28, a status conference for Sept. 18, and a trial for Oct. 1, 2013. The CCS indicates the parties appeared on Aug. 28 and “Plea offer outstanding.”

The next CCS entry is 391 days later, on Sept. 23, 2014. On that date, the court set pretrial conferences for Nov. 3, 2014, and Dec. 3, 2014, a status conference for Jan. 14, 2015, and trial for Jan. 27, 2015. The prosecutor and defense counsel appeared on Nov. 3, 2014, but “Def. not present. Dates re-

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Court of Appeals of Indiana

*Hearing oral argument at  
Old Vanderburgh County Courthouse  
Tuesday, March 15, 2016 @ 1 p.m.*



*Tinker v. State*

10A01-1507-CR-999

*On Appeal from Clark Circuit Court  
The Honorable Bradley Jacobs, Judge*

Indiana Bicentennial 1816-2016



Synopsis, cont.

main set.” The CCS entry for the pre-trial conference on Dec. 3, 2014 indicated both counsel are present and then stated: “Both counsel unavailable due to quantity of cases on the docket. Dates remain set.” A CCS entry for the Jan. 14, 2015, status conference indicates: “Jury trial is set for 1/27/15. Counsel has not had contact with defendant in some time. State requests warrant for FTA for Final Plea Deadline.” No CCS entry occurred on Jan. 27, 2015, when the trial was scheduled.

On Feb. 19, 2015, Tinker filed a motion to dismiss the charges against him because the State had not brought him to trial within a year. The trial court denied Tinker’s motion. At Tinker’s request, the trial court certified its order for interlocutory appeal, and we accepted jurisdiction.

On appeal, Tinker argues the trial court assigned responsibility for a number of days to him, when those days should have been assigned to the State. The State requests remand to allow the trial court to explain why certain days were assigned to Tinker.

E-filing pilot program in full swing

Late last year, the Court of Appeals received the first Indiana appeal in which all briefs were electronically filed. *Middleton v. State* was assigned to a three-judge panel on Dec. 28, after the court received the appellant’s e-tendered reply brief.

The filings follow an Indiana Supreme Court order establishing a pilot electronic filing program for itself and the Court of Appeals, effective Nov. 9, 2015. Tax Court e-filing is pending.

The order mandates e-filing in specific instances and provides for optional e-filing in all others. The mandatory cases are those in which the Indiana Public Defender or the Marion County Public Defender represent one party and the Indiana Attorney General represents the other.

The order also establishes an Indiana E-Filing System through which all electronic documents must be filed with the courts and can be served on users. According to the order, “E-Filing does not include transmission by facsimile or by email.”

The appellate courts pilot project is part of a larger initiative that will involve all Indiana courts by 2018.

Every Docket Tells a Story  
Indiana history as seen through Appeals Court cases

*Indiana Appellate Court Reports, Vols. 1, 2, and 3*, include the complete written opinions of several hundred cases decided by the Court of Appeals in its first two terms. Naturally, the legal issues before the court were many and varied. But the underlying facts, taken together, paint a vivid picture of Indiana’s economy and society circa 1891 – the same year James Naismith invented basketball.

**Agriculture** was an economic mainstay, and even city residents maintained livestock. In *The Noblesville Gas and Improvement Company v. Teter*, the court affirmed damages of \$60 against the gas company for the death of Teter’s cow after it fell into an open gas line trench.

The opinion notes that by county and city ordinance, “cows were permitted to run at large within the city (of Noblesville) within the day time.”

**Railroads** were frequent litigants. *Vols. 1, 2, and 3* record 34 railroad-related appeals, many involving damages to livestock, but also other issues. In a disputed-fare case from Greene County, the court ruled for the railroad but admonished the company “if unnecessary force was used in expelling the appellee from the train.”

*Vol. 1* also includes two cases involving **The Western Union Telegraph Co.** One of them, *Western Union v. Trumbull*, cited an 1885 law that anticipates current legal and policy arguments about **Internet neutrality**.

The relevant passage of the law said that telegraph companies “shall in no manner discriminate in rates charged, or words or figures charged for, or manner or conditions of service between any of its patrons, but shall serve individuals, corporations and other telegraphic companies with impartiality.”

Then as now, fraught **domestic relations** occupied a significant share of the docket.

In *Story v. Story*, the court affirmed judgment against a father who’d been sued by his daughter for nonpayment of \$3 a week for house and farm work.

*Marshall et al v. Bell* involved a father’s promissory note for support and maintenance of a “bastard child.”

And in *Adams v. Main*, the court affirmed a trial court’s judgment that the appellant had alienated the affections of the appellee’s wife, even without proof of adultery. Such proof was not required, per the Appeals Court.

**Contract disputes** comprised a large part of the docket, too, and some of them include telling details about prevailing wages and prices.

In *Greene v. McIntire et al*, the court affirmed judgment against New York City grain merchants who had contracted to buy 20,000 bushels of “grade No. 2 red wheat” from a Knox County farmer. Price: \$14,891, or 74 cents per bushel. (In December 2013, March 2014 wheat deliveries were trading at \$6.39/bushel at the Chicago Board of Trade.)

*Orme v. Cooper*, a Floyd County case, reported the value of 571 pounds of harness leather as \$114.20, or 20 cents per pound.

Mr. Trumbull, the appellant in the *Western Union* case cited above, paid 25 cents for his telegram.

Another case put the value of a Warren County house, lot, furnishings, and various materials and repairs at \$531.85.

*Vols. 1, 2, and 3* include just **18 criminal appeals** (all others assigned to the Supreme Court), many involving crimes of vice such as gambling, liquor violations and prostitution (referred to in one case as “a certain house of ill fame” in Valparaiso).

The court affirmed the trial court’s decision 13 times, or 72 percent.

Today’s Panel of Judges



The Honorable  
Edward W. Najam,  
Jr.  
  
Monroe County

**Edward W. Najam Jr.**, was nominated and appointed to the Court of Appeals of Indiana in 1992 and was retained by the electorate in 1996 and 2006. He is presiding judge of the court’s First District, which covers all of southern Indiana.

Judge Najam graduated from the Indiana University High School in Bloomington, where he was raised, and attended Indiana University Bloomington. While at IU, he was elected to Phi Beta Kappa, elected Student Body President, and earned a B.A. in political science in 1969, With Highest Distinction. He also received the Herman B Wells Senior Recognition Award for academic excellence and campus leadership.

Judge Najam earned his J.D. from the Harvard Law School in 1972. After admission to the Bar, he was Administrative Assistant to the Mayor of Bloomington for two years and an attorney in private practice for 18 years.

He served as a member of the Civil Justice Reform Act Advisory Group and the Local Rules Advisory Committee of the United States District Court for the Southern District of Indiana.

He was a member of the Bloomington Rotary Club, the Greater Bloomington Chamber of Commerce, and President of the Monroe County YMCA Board of Directors. Judge Najam is a director of the Community Foundation of Bloomington and Monroe County.

As Chair of the Appellate Practice Section of the Indiana State Bar Association, he initiated the Appellate Rules Project, which culminated in a complete revision of the Indiana Rules of Appellate Procedure in 2000, the first comprehensive review of the appellate rules in 30 years.

In 2001, he organized and co-chaired

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The Honorable  
John G. Baker.  
  
Monroe County

**John G. Baker** was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court’s First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana’s judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law.

Judge Baker’s many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout status as a youth).

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The Honorable  
Melissa S. May  
  
Vanderburgh County

Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation.

Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. Prior to this year, she served as Presiding Judge of the Fourth District, which covers all of Indiana.

Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association’s Litigation and Appellate Practice sections and was secretary to the Board of Governors.

As chair of the Indiana Pro Bono Commission (for the public good), Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into “plain English.”

Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association’s Standing Committee on Attorney Specialization, on which she’s served since 2003.

In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community.

She and her husband live in Morgan County.